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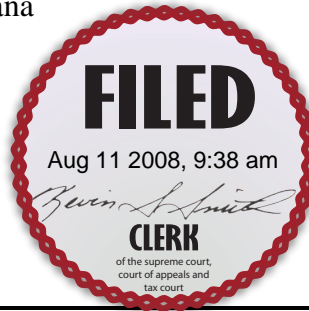
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF J.B. AND C.B., MINOR CHILDREN, AND)
THEIR MOTHER, CHA.B., AND THEIR)
FATHER, R.B.,)

CHA. B. and R.B.,)
Appellants/Respondents,)

vs.)

GRANT COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee/Petitioner.)

No. 27A02-0802-JV-111

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Randall L. Johnson, Judge
Cause No. 27D02-0505-JT-324

August 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellants-Respondents Cha.B. (“Mother”) and R.B. (“Father”) (collectively “Parents”) appeal from the juvenile court’s order terminating their parental rights to J.B. and C.B. Parents challenge whether (1) the findings made by the juvenile court were proper and sufficient to support its judgment; and (2) the Grant County Department of Child Services (“DCS”) introduced sufficient evidence to support the termination of Parents’ parental rights. Concluding that the findings made by the trial court were sufficient to support its judgment and that sufficient evidence was presented to support the termination of Parents’ parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of J.B., born August 5, 1999, and C.B., born April 2, 2003. In May 2003, DCS received a report that certain relatives may have sexually molested J.B. When DCS investigated, Parents confirmed that J.B. had previously been left in the care of two male relatives with histories of sexual abuse. One of the men was a convicted child molester, and Mother stated that the other male relative had sexually abused her in the past. While attempting to interview J.B., DCS determined that her speech capabilities were limited. At this point, DCS began providing the family with services, which included instruction on parenting, hygiene, and housekeeping.

On June 6, 2003, DCS received a complaint about the conditions of Parents’ home. DCS employee Kelly Scott went to the home and saw trash, dirty clothes, and

soiled diapers on the floor. She noted that the floors were so sticky that her feet stuck to the carpet. Additionally, Scott believed that the home was not structurally sound. Due to these conditions, Mother, J.B., and C.B. were temporarily placed in a shelter. Father was instructed to clean up the home, which he did. Thereafter, Mother and the children were allowed to return to the home.

In August 2003, C.B. was hospitalized due to her low weight. C.B.'s doctor initially refused to release her into Parents' care out of concern that Parents did not know how to properly feed C.B. While C.B. remained in the hospital, Mother received training on how to feed her. Because of this training, C.B.'s doctor eventually released her from the hospital.

On August 28, 2003, DCS filed a petition alleging that J.B. and C.B. were children in need of services ("CHINS"). Although a CHINS petition had been filed, J.B. and C.B. remained in Parents' care until November 2003. At that time, service providers again raised concerns about the condition of the home and Parents' ability to care for J.B. and C.B. DCS case manager Jennifer Lee visited the home and noted that it was cluttered with old food, dirty dishes, and toys. The upstairs of the home was unlivable, the stairway was rickety, the floors were sticky, and some of the pipes were not working. Due to these conditions, J.B. and C.B. were removed from the home and placed in foster care.

On January 22, 2004, the juvenile court found that J.B. and C.B. were CHINS. A dispositional decree was entered on March 18, 2004. The dispositional decree required Parents to obtain appropriate housing "and maintain that housing at a level of cleanliness

that meets community standards” Appellant’s App. Vol. 4 p. 693. Parents were required to participate in a parenting assessment and home-based case management services. They were also supposed to complete a psychological evaluation, and Father was to enroll in an anger management program.

Shortly after J.B. and C.B. were placed in foster care, Parents got into a dispute with their landlord and moved out of their home. Parents then moved to a home on Garthwaite Road in Marion. They were eventually evicted from this home due to late rent payments and not taking care of the home.

In June 2004, Parents moved into Shepherd’s Center, a transitional living facility in Muncie. Shepherd’s Center provided services to Parents during the time that they resided there. In February 2005, Father was forced to leave Shepherd’s Center because he was not doing his chores and because of inappropriate conversations he had with female residents. Mother left Shepherd’s Center a short time later.

Between February 2005 and May 2006, Parents struggled to find housing. During this period, Parents lived with various relatives. Case manager Lee testified that none of these homes were appropriate for visitation between Parents and the children. In May 2006, Parents moved into a home on 36th Street in Marion. For the most part, DCS found this home to be appropriate. Father continued to reside in the 36th Street home at the time of the termination hearing.

In May 2006, because of their new residence, DCS allowed Parents to have in-home supervised visits with J.B. and C.B. Prior to this, all visitations had been at DCS’s office and were supervised. Eventually, DCS allowed Parents to have an unsupervised

visit with the children. Restrictions were placed on this visit. Specifically, the children were not to have contact with their grandparents because some of them were alleged sexual offenders or were married to alleged sexual offenders. During the unsupervised visit, Parents took J.B. and C.B. to visit their grandmother. Because Parents violated the restrictions of the visit, all future visitations were supervised and conducted at DCS's office.

Parents' relationship was abusive. Mother and Father both suffer from emotional problems that require medication. Father specifically has problems controlling his anger. These issues often led to arguments that devolved into Father physically abusing Mother. Deana Reece, a therapist with Family Service Society who worked with Parents, believed that Mother was a victim of domestic violence. The arguments between Mother and Father escalated in May and June 2006 such that Parents separated with Mother moving out on her own. Parents' divorce became final on June 18, 2007.

DCS filed a petition to terminate Parents' parental rights to J.B. and C.B. on May 10, 2005. The juvenile court held a hearing on the petition on June 14, 2007. During the hearing, Reece testified that she worked with Father on his anger management problem and that Father made minimal progress on this issue. She believed that Father's problems with anger posed a risk of physical harm to J.B. and C.B. if they were placed in his care. With regard to Mother, Reece stated that since separating from Father, she had been involved in five to ten sexual relationships with different men and had become involved in an illegal internet scam. She believed that Mother lacked impulse control and wanted J.B. and C.B. in her life mostly to fulfill her own needs because she was lonely. Reece

related that Mother had told her that she did not feel she could adequately care for J.B. and C.B. on a day-to-day basis. She noted that she discontinued therapy services with both Mother and Father in May 2007 because Parents made minimal progress over the two-year period she treated them. She testified that Parents had not made sufficient improvements in their parenting skills to warrant reunification of the family. Reece indicated that even after Mother and Father separated, they made minimal progress on improving their parenting abilities.

DCS case manager Lee testified that housing has remained an issue for Parents and that the condition of their various homes has never been consistent. Lee stated that there never came a time when she felt she could recommend returning J.B. and C.B. to Parents' care. Even after Parents separated, Lee still could not recommend that the children be returned to either Mother or Father's care. Lee felt that the bottom-line issue with Parents was their parenting skills. Despite the various services provided to Parents, Lee testified that they still lacked the ability to effectively care for J.B. and C.B. She further stated that Parents had not shown the stability needed to safely care for J.B. and C.B.

John Garner, the court appointed special advocate ("CASA"), testified that termination of Mother and Father's parental rights was in J.B. and C.B.'s best interest. He stated that Parents had trouble putting aside their own needs in order to meet their children's needs. He believed that this made it hard for Parents to assume the responsibilities of parenthood. Although Parents were provided extensive services, he saw no significant change in their behavior.

On January 7, 2008, the juvenile court adopted, in whole, DCS's proposed findings of fact and entered an order terminating Mother and Father's parental rights to J.B. and C.B. The juvenile court found that the conditions that resulted in the removal of the children from the home would not be remedied and that continuation of the parent-child relationship posed a threat to the children's well-being. This appeal ensued.

DISCUSSION AND DECISION

Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. *In re B.D.J.*, 728 N.E.2d 195, 199 (Ind. Ct. App. 2000). However, the law allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. *Id.* at 199-200. This policy balances a parent's constitutional rights to the custody of their children with the State's limited authority to interfere with this right. *Id.* at 200. "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *Id.*

I. Improper Findings of Fact

Parents first argue that the findings made by the juvenile court in its January 7, 2008 order terminating their parental rights were improper. They note that the juvenile court adopted, in whole, DCS's proposed findings of fact and that a number of these findings contain the language "testified that" *See* Appellant's App. Vol 1 p. 190-92. Parents contend that findings with this type of language are improper and should be

considered surplusage. Parents argue that without these findings, the juvenile court's order lacks an adequate factual basis to support the judgment.

Initially, we note that the juvenile court adopted DCS's proposed findings verbatim. The Indiana Supreme Court has expressly declined to prohibit the practice of a trial court adopting a party's proposed findings verbatim because this can have practical advantages. *Prowell v. State*, 741 N.E.2d 704, 708-09 (Ind. 2001). Thus, we find no error in this regard.

The principal issue here concerns whether the findings made by the juvenile court in its January 7, 2008 order were improper. The juvenile court's order contains ten findings. Parents only challenge finding Number 7. That finding has twelve subparts. These subparts constitute the majority of the juvenile court's factual findings. Parents argue that a number of these subparts are improper findings because they contain mere recitations of testimony and witness opinions prefaced with the "testified that" language. "[The] Indiana Supreme Court has previously held that statements of this kind are 'not findings of basic fact in the spirit of the requirement.'" *Parks v. Delaware County Dep't of Child Servs.*, 862 N.E.2d 1275, 1279 (Ind. Ct. App. 2007) (quoting *Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 33 (Ind. 1981)). "A court or an administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z." *In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003). "A finding of fact must indicate, not what someone said is true, but what is determined to be true, for that is the trier of fact's duty." *Moore v. Indiana Family and Soc. Servs. Admin.*, 682 N.E.2d 545, 547 (Ind. Ct. App. 1997). "[T]he trier of fact must adopt the testimony of the witness

before the ‘finding’ may be considered a finding of fact.” *T.J.F.*, 798 N.E.2d at 874. “[T]he inclusion of statements that are not findings and that are merely recitation of testimony is ‘not harmful error’ and, instead, should be considered as ‘mere surplusage.’” *Parks*, 862 N.E.2d at 1279 (quoting *Perez*, 426 N.E.2d at 33).

We agree with Parents that those findings made by the juvenile court in finding Number 7 which were mere recitations of testimony, are either wholly or partially improper. After excising the improper portions, finding Number 7 reads as follows:

7. While it is true that the Court must take into account evidence of changed circumstances at trial, the Trial Court may consider evidence of parents’ habitual patterns of conduct in determining whether there is a substantial probability of future neglect or deprivation of child. *Matter of Danforth*, 542 N.E.2d 1330 (Ind. 1989). Although the Court has considered the parents’ claims of changed circumstances as to their dissolution of marriage, and change in households and household composition, the Court finds the evidence of Mother and Father’s past conduct and the evidence of their abilities more compelling and thus concludes that there is a reasonable probability that the conditions that resulted in the children’s removal and the reasons for the placement outside their parents’ care will not be remedied. The Court further finds that continuation of the parent-child relationships between the children and their parents poses a threat to the children’s well-being. These findings and conclusions are based in part upon the following:

(a) Both parents were provided a number of services throughout the CHINS proceeding and continuing after the Petition herein was filed. Mother and Father were referred to Grant-Blackford Mental Health/Cornerstone at the onset of the CHINS proceeding and received home-based case management through that agency. Mother and Father later moved to the Shepherd Center, a transitional housing program in Muncie, Indiana, where the parents had intensive case management services. After returning to Grant County, the parents received services through the Family Preservation Program at Family Service Society, in Marion. Those services continued until May 2007. Despite those efforts, neither Grant County DCS nor the therapist or case manager from Family Service Society ever recommended that the children return to their parents’ care.

- (b) That the parents had periods of time where they seemed to make progress toward providing a stable home for the children, most notably when the parents were cooperating with the intensive service through the Shepherd Center. However, Father was asked to leave that shelter due to his inappropriate behaviors and Mother chose to voluntarily leave shortly thereafter.
- (c) Although both parents participated in court-ordered services, although to varying degrees,
- (d) ***
- (e) It is to both parents' credit that they were consistent in maintaining visitation with the girls. However, with the exception of one unsupervised weekend visitation in the parents' home, visitation between the parents and children has been supervised. The parents failed to comply with DCS guidelines for the unsupervised visitation by taking the children to visit family that posed a potential risk to the children. . . . Since that time, no service provider recommended a return to unsupervised visitation.
- (f) The CASA's issue of concern was not on compliance with services but on determining whether the parents have the ability to provide a safe and appropriate home for the children and to provide care for them now and as they age. ***
- (g) Neuropsychological evaluations were performed as to both parents on October 5, 2006 by Barbara Gelder, Ph.D., H.S.P.P. ***
- (h) ***
- (i) ***
- (j) ***
- (k) Deana Reese [sic], a therapist with (and Director of) the Family Preservation Program, worked with both parents toward reunification with their children. Neither parent achieved sufficient progress to lead Ms. Reese [sic] to recommend the children be returned to the parents' care. Mother was more consistent in keeping appointments and working in therapy. Father was resistant to Ms. Reese's [sic] therapy attempts and did not follow through with her recommendations regarding pursuing medication for his self-reported depression. Ms. Reese [sic] also recommended other changes that Father could make to alleviate his depression such as changing his sleeping and eating habits and practicing relaxation techniques. Ms. Reese [sic] did not observe that Father followed through with any of these suggestions.
- (l) Neither parent made significant changes in their lifestyles in order to be reunified with their children. ***

Appellant's App. Vol. 1 p. 190-92.

Of the twelve findings made by the juvenile court in finding number seven, subparts (d), (h), (i), and (j) were wholly improper, subparts (c), (e), (f), (g), and (l) were partially improper, and subparts (a), (b), and (k) were proper. Subpart (d) related the testimony of a service provider that was largely duplicative of testimony given by other witnesses. Part of subpart (g) and subparts (h), (i), and (j) all related to the testimony of Dr. Gelder, who performed psychological tests on Mother and Father. These findings made generalizations about Mother's and Father's abilities to parent based on how they performed on the psychological tests administered by Dr. Gelder. While such testimony is important, it is of less weight than the firsthand accounts of Mother's and Father's parenting skills given by service providers like Jennifer Lee. Thus, the wholly improper findings made by the trial court were, for the most part, not essential to the judgment. Excluding all improper findings, we conclude that the remainder of the findings made by the juvenile court in its January 7, 2008 order are sufficient to support the judgment terminating Mother's and Father's parental rights.

II. Sufficiency of the Evidence

Parents next contend that the evidence presented was insufficient to support the juvenile court's order terminating their parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating

parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we will not set aside the court's findings and judgment unless they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

Indiana Code section 31-35-2-4(b) (2005) provides that in order to terminate a parent-child relationship, the State must prove:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- ***
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Indiana Code section 31-34-12-2 (2005) further provides that the State must establish the elements of Indiana Code section 31-35-2-4 by clear and convincing evidence.

Parents argue that insufficient evidence was presented to show that there was a reasonable probability that the conditions that resulted in the removal of J.B. and C.B.

will not be remedied. In order to determine whether there is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court, though, must also evaluate the parent's habitual patterns of conduct. *Id.* "Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Additionally, the juvenile court can properly consider the services offered by the office of family and children to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

One of the principal reasons why J.B. and C.B. were removed from Parents' care was due to the family's housing situation. In both May and November 2003, the condition of the home was found to be inappropriate. Trash, dirty clothes, and soiled diapers littered the floor of the home. The home itself was structurally unsound and the upstairs was unlivable. After J.B. and C.B. were removed from Parents' care in November 2003, Parents got into an argument with their landlord and were forced to move out of their home. Thereafter, Parents' housing situation was unstable. Parents moved to a home on Garthwaite Road in Marion but were soon evicted. Between June

2004 and February 2005, Parents lived at Shepherd's Center. Father, though, was kicked out of Shepherd's Center in February 2005 because of inappropriate behavior, and Mother left shortly thereafter. Between February 2005 and May 2006, Parents were virtually homeless as they bounced from one relative's house to another. In May 2006, Parents finally settled into a home on 36th Street in Marion that DCS, for the most part, found to be appropriate. Shortly after moving into this home, though, Parents separated. At the time of the termination hearing, Mother and Father resided in separate homes. DCS case manager Jennifer Lee testified that the condition of Parents' various homes was never consistent. Thus, after J.B. and C.B. were removed from Parents' care, Mother and Father did not maintain a stable, safe, and clean home.

J.B. and C.B. were also removed from Parents' care due to Parents' deficient parenting skills. It is significant to note that despite completing a parenting assessment and receiving services designed to improve their parenting skills, over a three-year period all but one of Parents' visitations with J.B. and C.B. were supervised. During the one unsupervised visitation Parents had with J.B. and C.B., Parents violated the restrictions DCS placed on the visit by exposing the children to inappropriate relatives who posed a risk to them.

This unsupervised visit highlights one of Parents' weaknesses. Parents have a proclivity for exposing their children to inappropriate individuals. One of the reasons why J.B. and C.B. were removed from Mother and Father's care was because there were concerns that two male relatives had sexually molested J.B. Parents confirmed that they were aware that these two male relatives had histories of sexual abuse and that, despite

this, they had still left J.B. in their care. When Parents were afforded an unsupervised visit with J.B. and C.B., they again exposed their children to inappropriate individuals by taking them to visit their grandmother who, at that time, was married to one of the male relatives who allegedly sexually abused J.B.

Father's problems with anger management inhibit his ability to parent his children. In the dispositional decree, the juvenile court noted that Father was to enroll in an anger management program. Deana Reece testified that she worked with Father on controlling his anger, but he made minimal progress on this issue. Father's problems controlling his anger often led to arguments between him and Mother. Sometimes these arguments led to Father physically abusing Mother. Reece believed that Father's anger management problem posed a risk of physical harm to J.B. and C.B. if they were placed in his care.

As to Mother, Reece testified that she lacked impulse control and wanted the children in her life mostly to fulfill her own needs and because she was lonely. After separating from Father, Mother had five to ten sexual relationships with different men and was involved in an illegal internet scam. Mother specifically told Reece that she did not feel she could adequately care for J.B. and C.B. on a day-to-day basis.

Reece, case manager Lee, and the CASA John Garner agreed that Parents did not make progress towards improving their parenting skills. Garner stated that Parents had trouble putting aside their own needs in order to meet the needs of their children and that this made it hard for Mother and Father to assume the responsibilities of parenthood. Reece testified that Parents had not made sufficient improvements in their parenting skills

to warrant reunification of the family. Lee noted that despite the various services Parents received, they still lacked the ability to effectively parent J.B. and C.B.

Based on the evidence of Parents' housing situation and their parenting skills, sufficient evidence was presented to permit the juvenile court to conclude that there was a reasonable probability that the conditions that resulted in the removal of J.B. and C.B. would not be remedied. Parents do not contend that there was insufficient evidence to support the other statutory elements. Therefore, we conclude that sufficient evidence was introduced to support the juvenile court's judgment terminating Mother's and Father's parental rights to J.B. and C.B.

In sum, we conclude that after excluding all improper findings, the remainder of the findings made by the juvenile court were sufficient to support the judgment. We also conclude that sufficient evidence was presented to support the juvenile court's judgment terminating Mother's and Father's parental rights to J.B. and C.B.

The judgment of the juvenile court is affirmed.

RILEY, J., and BAILEY, J., concur.